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BEFORE THE
Federal Communications Commission

WASHINGTON, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Implementation of Section 309(j)
of the Communications Act)

PP Docket No. 93-253

Competitive Bidding)

REPLY COMMENTS OF

JOHN G. ANDRIKOPOULOS, BENT ELBOW CORPORATION,
KENNETH B. BLAIR, ROBERT B. BLOW, BILLY T. CAMPBELL,
JUDITH CAMPBELL, IMRE F. DANCs, EQUINUNK CELLULAR
PARTNERSHIP, FOOTHILLS COMMUNICATIONS, G.P., WARREN R. HAAS,
BERTIE D. HEINER, HIGH HOPES GENERAL PARTNERSHIP,
THE JACOBS GROUP, MARK J. KINGTON, LONGVIEW CELLULAR
ASSOCIATES, MILWAUKEE PARTNERS, DAVID MIXER,
JAMES B. MURRAY, JR., OAK RIDGE COMMUNICATIONS, G.P.,
OMEGA CELLULAR PARTNERS I, P & G CELLULAR TELEPHONE COMPANY,
LORETTA C. PARKER, QUANTUM COMMUNICATIONS GROUP, INC.,
KATHLEEN R. SCHULTZ, FREDERIC W. SCOTT, JR.,
SHENANDOAH COMMUNICATIONS AND ASSOCIATES,
SHERWOOD CELLULAR PARTNERS, SIERRA VENTURES,
SOUNDS COMMUNICATIONS, SOUTHERN CELLULAR, TARHEEL CELLULAR,
VERMEL ENTERPRISES, INC., VISTA CELLULAR ASSOCIATES,
JERRY R. WEBB, WISCONSIN PARTNERS, AND ROBERT K. WOOD

John G. Andrikopoulos, Bent Elbow Corporation, Kenneth
B. Blair, Robert B. Blow, Billy T. Campbell, Judith
Campbell, Imre F. Dancs, Equinunk Cellular Partnership,
Foothills Communications, G.P., Warren R. Haas, Bertie D.
Heiner, High Hopes General Partnership, The Jacobs Group,
Mark J. Kington, Longview Cellular Associates, Milwaukee
Partners, David Mixer, James B. Murray, Jr., Oak Ridge
Communications, G.P., Omega Cellular Partners I, P & G
Cellular Telephone Company, Loretta C. Parker, Quantum
Communications Group, Inc., Kathleen R. Schultz, Frederic W.

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Scott, Jr., Shenandoah Communications and Associates, Sherwood Cellular Partners, Sierra Ventures, Sound Communications, Southern Cellular, Tarheel Cellular, Vermel Enterprises, Inc., Vista Cellular Associates, Jerry R. Webb, Wisconsin Partners, and Robert K. Wood (hereinafter "Joint Reply Commenters"), by their attorney, hereby submit their reply to the comments filed on the Notice of Proposed Rulemaking ("Notice") in the above-referenced docket.^{1/} Each of the Joint Reply Commenters is a party that filed unserved cellular area applications at the Commission in accordance with the FCC's lottery allocation procedure, which has been halted pending the resolution of this docket. Based on their review of the comments, Joint Reply Commenters respectfully request that the Commission respond to the overwhelming majority of commenters and maintain lottery proceedings for those unserved area applications filed prior to July 26, 1993.

The Commission Should Hold Lotteries for the Unserved Cellular Areas, as Requested by the Overwhelming Number of the Commenters

The comments demonstrate an overwhelming opposition to the Commission's proposal to use an auction, rather than a lottery, to grant licenses for cellular unserved areas for which lottery applications were accepted for filing prior to

^{1/} Notice of Proposed Rulemaking, Implementation of Section 309(j) of the Communications Act: Competitive Bidding, PP Docket No. 93-253 (Oct. 12, 1993).

July 26, 1993. Of the 54 comments directly addressing the subject, 50 commenters reject auctions as being fundamentally unfair and an unreasonable retroactive application of Commission policy in contravention of Congressional intent and the public interest.^{2/}

Only four commenters supported the Commission's proposal.^{3/} All four of these parties represent multi-billion dollar companies with the ability to outbid all other parties.^{4/} Therefore, Joint Reply Commenters respectfully submit that only the big players likely to win the auctions want the Commission to use auctions to allocate licenses among the prior-filed unserved cellular area applications; yet, these same players have not shown any

^{2/} See Comments filed by Charles N. Andreae III; John G. Andrikopoulos, et al.; Arch Communications Group, Inc.; J.M. Baku; Jeffrey T. Bergner; Van R. Boyette; Deirdre B. Branch; Capital Hill Management Corporation; Jill Kilner Carbone; Chase Communications; The Coalition for Equity in Licensing; David M. Cohen; Cole, Raywid & Braverman; Thomas Crema; Steven L. Dickerson; Abby Dilley; Laura G. Dooley; John Dudinsky, Jr.; John R. Duesenberg; Mark H. Duesenberg; Debra L. Gent; Janet B. Gencarelli; Debra Gervasini; David F. Glencarelli; Martin Charles Gleyier; Thomas J. Jasien; Claire Joyce; Abraham Kye, et al.; Ward Leber and Eroca Daniel; Robert Lutz, et al.; John J. Mandler; M. Kathleen O'Connor; Michael J. Pernecke; Raegene Pernecke; Jeffrey Peterson; David Pines; Barbara R.; Lori Rafuse; Michael R. Rickman; Thomas Salmon; Michael Sauls; The Small RSA Operators; Henry J. Staudinger; James F. Stern; L. Brennan Van Dyke; The Richard L. Vega Group; WCC Cellular; Ken B. Walls; Leslie R. Walls; Ann Bradshaw Woods.

^{3/} See Comments filed by Bell Atlantic Personal Communications, Inc.; CTIA; McCaw Cellular Communications, Inc.; Southwestern Bell Corp.

^{4/} The Board of Directors of CTIA is dominated by the various multi-billion dollar cellular companies.

justification in their comments that they are entitled to the auctions they so eagerly desire.

Three of the four commenters merely agree with the FCC's proposal without any support whatsoever that holding auctions for the unserved cellular licenses would be in the public interest.^{5/} This is because there are no valid public interest explanations for retroactively applying auctions to the unserved cellular area applicants. The only conceivable public interest consideration -- that the government could raise more money from the auctions than the lottery -- is precluded by the very legislation giving the Commission the authority to hold auctions.^{6/}

Only Bell Atlantic explains its viewpoint, arguing that auctioning these licenses will provide opportunity for a wider variety of applicants to become cellular licensees.^{7/} The logic behind this argument is spurious, since Bell Atlantic further argues to limit the pool of bidders to those who already had their applications on file. Under this scenario, the same variety of applicants are in the pool, but instead of all applicants having an equal chance of gaining the license, Bell Atlantic, which already holds

^{5/} Comments of CTIA at 31 n.78; Comments of McCaw Cellular Communications, Inc. at 30-31; Comments of Southwestern Bell Corp. at 12-13.

^{6/} See 47 U.S.C. 309(j)(4)(C), which prohibits the Commission from making licensing determinations based on the expectation of the revenues that would result from competitive bidding.

^{7/} Comments of Bell Atlantic Personal Communications, Inc. at 22.

more cellular licenses than most other applicants, can use its multi-billion dollar resources to assure itself of outbidding all other applicants. Therefore, rather than bringing about a greater variety of cellular licensees, auctioning the unserved areas will limit the number of cellular licensees.

Bell Atlantic also argues that auctions would discourage the participation of speculators who do not intend to build out unserved areas, thus promoting more rapid service to the public.^{8/} This argument is equally unavailing. As many commenters noted, these concerns were adequately allayed by the Commission's new construction requirements and anti-trafficking rules promulgated upon implementation of unserved cellular area licensing.^{9/} Furthermore, as argued by numerous commenters, the most likely impediment to rapid implementation of cellular to unserved areas is the delay caused while waiting for the FCC to auction the very frequencies that could be awarded by lottery now.^{10/}

Finally, none of the four commenters favoring the auction proposal submitted any legal analysis to support

8/ Id.

9/ See Comments of Abraham Kye, et al. at 8 (citing 47 C.F.R. §§ 22.43(c)(2)(ii), 22.920(c)); Comments of Robert Lutz, et al. at 8 (same); Comments of the Small RSA Operators at 5-7 (citing the above provisions, and 47 C.F.R. § 22.920(b)).

10/ See, e.g., Comments of John G. Andrikopoulos, et al. at 12; Comments of the Small RSA Operators at 8.

their position, despite the fact that these multi-billion dollar companies have the resources to do so. Their failure to do so is further evidence that there really is no legal analysis to support the argument for auctions, as compared to the legal justifications, supported by D.C. Circuit and U.S. Supreme Court decisions, offered by those in favor of maintaining the lotteries.^{11/}

Conclusion

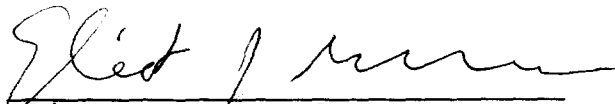
For the above stated reasons, Joint Reply Commenters respectfully urge the Commission to license cellular unserved areas by lottery in instances where the applications were on file with the Commission prior to July 26, 1993.^{12/}

^{11/} See, e.g., Comments of John G. Andrikopoulos, et al. at 4-15 (representing 26 parties), Comments of the Coalition for Equity in Licensing at 5-17 (representing 61 parties), Comments of Cole, Raywid & Braverman at 2-4, Comments of Abraham Kye, et al. at 1-9 (representing 341 parties), Comments of Robert Lutz, et al. at 1-9 (representing 8 parties), Comments of the Small RSA Operators at 7-12 (representing 3 parties), Comments of WCC Cellular at 5-16.

^{12/} Should the Commission opt for auction proceedings for cellular unserved areas (and assuming unserved cellular area auctions are not delayed by a court challenge), Joint Reply Commenters insist that the Commission limit the pool of auction participants to those parties with applications accepted for filing as of July 26, 1993. Notice at ¶ 160. In no way should the Commission consider the absurd position advanced in Comments of PNC Cellular, Inc. and its Affiliates at 2-3, to expand participation to entities that did not file applications by that date. To reopen an already closed filing window would add yet another unfairness to the Commission's unreasonable retroactive application of rules and policy.

Respectfully submitted,

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